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High Court Grants Blocking Injunction

Julius Stobbs (Stobbs IP) · Friday, April 8th, 2016

Cartier International Limited and Montblanc-Simplo GmbH have recently succeeded in an application for a website-blocking order in *Cartier v British Telecommunications* [2016] EWHC 339 (Ch) (“Cartier 2”). The ruling is the second time the High Court has been asked by the Claimants to block websites selling trade mark infringing counterfeit goods. The first was *Cartier International v British Sky Broadcasting* [2014] EWHC 3354 (Ch) (“Cartier 1”), which is currently under appeal (appeal to be heard on 13 April 2016).

Justice Hacon required the Defendants, five of the main Internet Service Providers (ISPs) in the United Kingdom, to block access to certain websites because they were being used by the operators to infringe the Claimants’ trade mark rights in CARTIER and MONTBLANC.

In coming to his decision, Justice Hacon stated that the court had jurisdiction in the present application for an injunction following the reasoning by Arnold J in *Cartier 1*. He also concluded that the threshold conditions for the exercise of the jurisdiction under the Enforcement Directive were satisfied, namely that the ISPs’ services were used to infringe the Claimant’s trade marks and that the ISPs had actual knowledge of the infringing acts. Finally, assuming that the reasoning in *Cartier 1* is correct, he assessed the question of why the injunction sought would be proportionate in relation to the facts of the *Cartier 2* matter. He notes that there is little reason to distinguish the facts in this application from those in *Cartier 1* and concludes that granting the injunction would be proportionate to the objective pursued.

This is a big step forward for brand owners seeking to prevent the sale of counterfeit products that infringe their trade mark rights on the Internet. Previously, a similar right was only available in copyright infringement cases, where UK courts have the power to grant injunctions against an ISP if it has “actual knowledge” that an operator was using its service to infringe copyright under Section 97A of the Copyright, Designs and Patents Act 1988. Given the precedent in *Cartier 1*, Justice Hacon came to the decision of granting an injunction in *Cartier 2* without much difficulty. Accordingly, if the appeal is upheld on *Cartier 1*, we would imagine it being relatively easy for parties to obtain this type of injunction going forward, which would be welcome news for brand owners.

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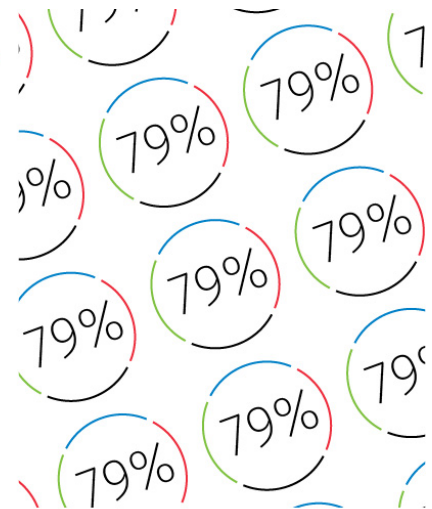
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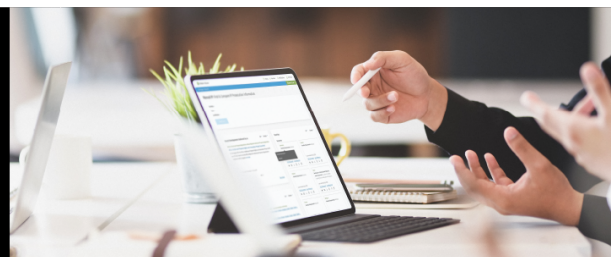


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